

D. 22231/18

IN THE SUPREME COURT OF INDIA
CONTEMPT PETITION NO. 444 2016

IN
WRIT PETITION NO. 494/2012

IN THE MATTER OF:

Mathew Thomas

... Petitioner

VERSUS

K.D. Tripathi & Anr.

... Contemnors

AND IN THE MATTER OF:

IN WRIT PETITION NO. 494/2012

Justice K.S. Puttaswamy (Retd) & Anr

... Petitioner

VERSUS

Union of India & Ors.

... Respondents

WITH

PAPER BOOK

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ADVOCATE FOR THE PETITIONER:

MS AISHWARYA BHATI

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RECORD OF PROCEEDINGS

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SYNOPSIS

The captioned Writ Petition i.e. Writ Petition (Civil) 37/ 2015, filed by the Petitioner herein, was filed in January 2015 impugning the UID / Aadhaar project that seeks to establish a unique identification authority of India vide an executive notification dated 28.01.2009 to assign unique 12-digit identifier numbers to all residents of the country, on various grounds, *inter alia*, that the project is ultra vires the constitution for lacking requisite legislative sanction, that it is a major and imminent danger to national security and the security of the country and that it infringes various fundamental rights of the citizens including the right to privacy as enshrined in the Constitution and also the manner in which the project has been undertaken is violative of Article 14 for being completely procedurally unreasonable, is without application of mind, would not achieve any of the purposes for which it is intended to be used and also that it is causing widespread exclusion of poor and other vulnerable sections of the society in its use to inherent fallibility of the technology and inappropriate use. The Petitioner in his pleadings in the captioned writ petition has furnished what he believes is clear mathematical proof that the biometric system used by UIDAI will result in unacceptably large-scale errors and the said system has been shown to be scientifically and technologically infeasible for applications such as PDS, MGNREGS, LPG subsidy administration. A research

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report of the National Academies of USA consisting of the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine and the National Research Council have concluded that biometrics is "Inherently probabilistic and hence, inherently fallible."

The said writ petition was heard along with a batch of other similar petitions led by Writ Petition (Civil) 494/2012 and matter is currently pending before this Hon'ble Court to be further heard by a Constitution Bench. In the meanwhile, this Court has passed interim orders dated 23.03.2013, 24.03.2014, 16.03.2015, 11.08.2015 and also on 15.10.2015 and in each of those orders made it effectively clear that no authority of any government – state and central government shall insist on Aadhaar being produced by any individual and deny him/her any service that is due to him/her. Further, the union government was also directed to give widespread publicity to the fact that Aadhaar was not mandatory for any purpose.

Despite such repeated orders by this Hon'ble Court there has been widespread violation of the orders and a few contempt petitions and affidavits were also filed before this Hon'ble Court including many by the Petitioner herein which are all pending adjudication.

C

This petition is directed against officials in the Ministry of Petroleum and Natural Gas and the chairman of the Indian Oil Corporation Ltd, which have either issued or allowed issuance of and implementation of a circular dated 01.02.2016 that Aadhaar shall be mandatorily collected for the benefit of availing LPG subsidy.

LIST OF DATES

28.01.2009

The Unique Identification Authority of India was established by an executive notification dated 28.01.2009. The agency, which has no legal backing, will own and operate the Unique Identification Number database. The agency aims to provide a unique identification number to all persons resident in India, but not identity cards. The agency maintains a database of residents containing biometric and other data. The UIDAI was originally a part of the Planning Commission of India but has now been transferred to being part of the Department of Electronics and Information Technology (DEITY) without its functions having been changed. The UID program has been criticized by many people and is

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considered to be real and present danger to the security of the Nation and to its people. India's Intelligence any basis whatsoever. For example, in PDS, the poor do not receive the rations due to lack of identity, but because of the discretion vested in lower bureaucracy, like food inspectors to decide eligibility, and political pressure to issue BPL ration cards to ineligible persons. RTI replies to the Petitioners prove that there were no fake ration cards in the State of Karnataka, but only ineligible ones, which were detected without using UID numbers. Also under wrong government policy, while lakhs of tons of food grains are damaged due to lack of storage, instead of spending money building storage, the government squanders funds on an impractical scheme. Similarly, LPG subsidy leakages are due to misuse of domestic cylinders for commercial purposes, which cash transfers to bank accounts linked to UID numbers cannot prevent. In RTI replies to

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the Petitioners, OMCs' have admitted
that they have done no analysis or
investigation into how the LPG subsidies
are leaked. It is not that the Contemnors/
Respondents are unaware of these facts.
They are deliberately making false claims
to mislead people.

2012 - 2015

A number of petitions filed before this
Hon'ble Court challenging the
Constitutional vires of the UID project on
multiple grounds including that it is a threat
to national security, its infringement on
various fundamental rights including the
right to privacy and that it does not have
the requisite legislative sanction and also
that it is procedurally unreasonable and
impractical. Thus, the UID / Aadhaar
Scheme is a huge waste of public money,
being infeasible. Writ Petition (Civil)
37/2015 was filed by the Petitioner herein.

The petitions were all tagged together and
are led by Writ Petition (Civil) 494/2012
Justice (Retd). K.S. Puttaswamy v. Union

of India & Ors.

F

23.09.2013

This Hon'ble Court was pleased to pass an interim orders in the batch of petitions mentioned above that "no person should suffer for not getting the Adhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Adhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant"

26.11.2013

This Hon'ble Court disallowed applications by the Ministry of Petroleum and Natural Gas, Government of India, the Unique Identification Authority of India and also the Oil Marketing Companies to modify the order dated 23.09.2013 to permit them to insist on Aadhaar for their purposes.

24.03.2014

This Hon'ble Court, while hearing a Special Leave Petition filed by the UIDAI against the Central Bureau of Investigation impugning an order of the Goa Bench of

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High Court of Bombay directing the UIDAI to share fingerprints of certain people in a certain locality to help with a criminal investigation, reiterated that Aadhaar shall not be mandatory and that "all forms/circulars/likes should be modified so as to not compulsorily require the Aadhaar number in order to meet the requirement of the interim order passed by this Court forthwith".

16.03.2015

This Hon'ble Court, while taking notice of widespread non-compliance to its earlier orders in the matter, reiterated the order of the 23.09.2013 and 26.03.2014 in substance.

11.08.2015

A learned three judge bench of this Hon'ble Court, while hearing final arguments in the batch of aforementioned writ petitions, referred the matters to a Constitution Bench as in its view, the petitions raised questions of far reaching importance that require the interpretation of Constitution in relation to the existence

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of and the scope of the right to privacy and
the same required to be adjudicated by a
Constitution Bench of a minimum of five
judges under Article 145(3) of the
Constitution of India.

While the petitions were referred, it was
pleased to pass a further interim order that
reads:

1. The Union of India shall give wide
publicity in the electronic and print
media including radio and television
networks that it is not mandatory for
a citizen to obtain an Aadhaar card;
2. The production of an Aadhaar card
will not be condition for obtaining any
benefits otherwise due to a citizen;
3. The Unique Identification Number or
the Aadhaar card will not be used by
the respondents for any purpose
other than the PDS Scheme and in
particular for the purpose of
distribution of foodgrains, etc. and

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cooking fuel, such as kerosene. The
Aadhaar card may also be used for
the purpose of the LPG Distribution
Scheme.

4. The information about an individual
obtained by the Unique Identification
Authority of India while issuing an
Aadhaar card shall not be used for
any other purpose, save as above,
except as may be directed by a
Court for the purpose of criminal
investigation.

15.10.2015

On 15.10.2015, this Hon'ble Court while
partially allowing an Application for
modification of the order dated 11.08.2015
by the Union of India to include certain
other schemes under permitted uses for
Aadhaar, reiterated that all interim orders
of the Hon'ble Court starting from
23.09.2013 must be followed by Union and
all other entities and also reiterated that
Aadhaar enrolment shall be purely on a
voluntary basis.

01.02.2016

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On the first of February 2016, a circular is issued by the Chief Area Manager (Bangalore Area) of the Indian Oil Corporation to all the Indane gas distributors, *inter alia*, exhorting them to communicate to all BTC (Bank Transfer compliant) customers that it is mandatory to obtain and share the Aadhaar details with them and also exhorting them to display the said circular.

April 2016

A customer of IOC Ms. Reshma (contacts the Petitioner and narrated that she was denied LPG refills on 19th of April by the staff of Sudheendhra Indiane Gas Agency, No - 96/3 80 Ft road, HRBR layout, Hennur mainroad, Bengaluru - 560043 and that when she sought an explanation for the same on 20th of April, she was shown the said circular.

05.05.2016

The Petitioner on 5th May 2016 wrote to the Respondent Contemnors pointing out that the circulars has been issued in contempt of the Hon'ble Supreme Court's

K
orders and asked them to rescind the said
circulars within seven days, to which the
Respondent Contemnors have not taken
any action nor have the Respondents
tendered a reply to the said letter.

4.07.2016

Hence this Contempt Petition.

ITEM NO.5+56

Court No.5

SECTION PIL

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 494 OF 2012

JUSTICE K.S.PUTTASWAMY(RETD) & ANR

...Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

...Respondent(s)

(With appln(s) for stay)

WITH T.P.(C) NO. 47-48 of 2013

(With appln(s) for stay and office report)

(Appln. for deletion of the name of petitioner no. 1)

T.P.(C) NO. 476 of 2013

(With appln(s) for stay and

office report)

W.P.(C) No. 829 of 2013

(With appln(s) for interim relief and office report)

Date: 23/09/2013 These Petitions were called on for
hearing today.

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CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN

HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. Anil B. Divan, Sr. Adv.
Mr. Ankit Goel, Adv.
Mr. Ranvir Singh, Adv.
Mr. Sanjay Yadav, Adv.
Mr. Anish Kumar Gupta, Adv.
Ms. Deepshikha Bharati, Adv.
Mr. S.S. Shamsery, Adv.
Mr. Rajeev Kr. Singh, Adv.
Mr. Nachiketa Joshi, Adv.
Mr. P.R. Kovilan Poongkuntran, Adv.
Mrs. Geetha Kovilan, Adv.
Mr. Shyam Divan, Sr. Adv.
Mr. Pratap Venugopal, Adv.
Ms. Meenakshi Chauhan, Adv.
Mr. Varun Singh, Adv.
Mr. Gaurav Nair, Adv. for
M/s. K.J. John & Co.

For Respondent(s) Mr. Mohan Parasaran, SG
Mr. L. Nageshwar Rao, ASG
Mr. Farrukh Rasheed, Adv.
Mr. Alok Mishra, Adv.
Mr. D.S. Mahra, Adv.

UPON hearing counsel the Court made the following

ORDER

Issue notice in W.P.(C) No. 829/2013.

Application for deletion of the name of petitioner no. 1 in

T.P.(C) Nos. 47 of 2013 is allowed.

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T.P.(C)nos. 47-48 of 2013 and T.P.(C) No. 476 of 2013 are allowed in terms of the signed order.

All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over.

In the meanwhile, no person should suffer for not getting the Adhaar card inspite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Adhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant.

|(DEEPAK MANSUKHANI) |(M.S. NEGI)

| Court Master | Court Master

(Signed order is placed on the file)

Cont -

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO(s). 47-48 OF 2013

THE GOVT. OF INDIA & ORS. ETC.Petitioner(s)

VERSUS

S. RAJU & ANR. ETC.Respondent(s)

WITH

TRANSFER PETITION(CIVIL) NO(s). 476 OF 2013

ORDER

Heard learned counsel for the parties.

Having regard to the facts and circumstances of the case, we are satisfied that this is a fit case where the prayer for transfer is to be allowed.

On the facts of the case, we allow these Transfer Petitions and direct that W.P(C) No. 439 of 2012 titled S. Raju Vs. Govt. of India and Others pending before the D.B. of the High Court of Judicature at Madras and PIL No. 10 of 2012 titled VickramCrishna andOthers Vs. UIDAI and Others. pending before the High Court of Judicature at Bombay be transferred to this Court. The Registry of the High Court of Madras and Registry of the High Court of

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Bombay are requested to transmit the original records
to this Court expeditiously.

These Transfer Petitions are accordingly allowed.

.....J.
(Dr. B.S. CHAUHAN)
.....J.
(S.A. BOBDE)

NEW DELHI;

SEPTEMBER 23, 2013.

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ITEM NO.301

COURT NO.6

SECTION PIL

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 494/2012

JUSTICE K.S.PUTTASWAMY(RETD)& ANR

... Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for stay, impleadment, clarification/modification of Court's order, intervention, directions, permission to file additional documents, permission to file additional additional affidavit and office report)

(For Final Disposal)

WITH

T.C.(C) No. 151/2013

(With appln.(s) for impleadment as party respondent and appln.(s) for modification of court's order) T.C.(C) No. 152/2013

W.P.(C) No. 829/2013

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(With appln.(s) for impleadment and impleadment/directions
and interim relief and office report)

W.P.(C) No. 833/2013

(With appln.(s) for directions and appln.(s) for impleadment
and appln.(s) for impleadment and appln.(s) for permission to
file additional documents and Office Report)

W.P.(C) No. 932/2013

(With appln.(s) for directions and appln.(s) for interim
directions and Office Report)

T.P.(C) No.

312/2014 (With
Office Report)

T.P.(C) No.

313/2014 (With
Office Report)

W.P.(C) No. 37/2015

(With appln.(s) for amendment of memo of parties and interim
stay and permission to file additional documents and office
report) Date : 16/03/2015 These matters were called on for
hearing today.

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CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Mr. Gopal Subramaniam, Sr. Adv.

Ms. Aishwarya Bhati, Adv.

Mr. Talha Abdul Rehman, Adv.

Ms. Neha Meena, Adv.

Ms. Anusha Ramesh, Adv.

Ms. Sadhana Saxena, Adv.

Mr. Shyam Divan, Sr. Adv.

Mr. Pratap Venugopal, Adv.

Ms. Surekha Raman, Adv.

Ms. Supriya Jain, Adv.

Mr. Gaurav Nair, Adv.

Ms. Niharika, Adv.

For

M/s. K.J. John & Co.

Ms. Meenakshi Arora, Sr. Adv.

Mr. Rahul Narayan, Adv.

Mr. Mohit Singh, Adv.

Mr. Abhishek Atrey, Adv.

Ms. V. Mohana, Adv.

Mr. B. Raghunath, Adv.

Mr. Vijay Kumar, Adv.

Ms. Geeta Kovilam, Adv.

Mr. P.V. Kovilam, Adv.

Mr. Ankit Goel, Adv.

Mr. Sanjay Yadav, Adv.

for

Mr. Anish Kumar Gupta, Adv.

Mr. Amit Meharia, Adv.

Mr. Tannishtha Singh, Adv.

For For

Respondent(s)

M/s. Meharia & Company

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UOI

Mr. Ranjit Kumar, SG
Mr. Maninder Singh, ASG Mr. Ajay
Sharma, Adv.
Ms. Binu Tamta, Adv.
Ms. Meenakshi Grover, Adv.
Mr. Zoheb Hossain, Adv.
Mr. Abhinav Mukerji, Adv.

Mr. B.K. Prasad, Adv.
Mr. D.S. Mahra, Adv.
Mr. Prasanna S., Adv.
Mr. Gopal Singh, Adv.
Mr. Rituraj Biswas, Adv.
Ms. Rashmi Srivastava, Adv.
Ms. Shubra Rai, Adv.
Mr. Jayant Bhushan, Sr. Adv.
Mr. Kuldeep S. Parihar, Adv.
Mr. H.S. Parihar, Adv.

State of
Uttarakhand

Mr. Pankaj Bhatia, Adv.
Mr. Dushyant Kumar, Adv.
Mr. Vivek Choudhary, Adv.
Mr. Jatinder Kumar Bhatia, Adv.
Mr. Sumit Atrey, Adv.
Ms. Priyadarshi Banerjee, Adv.
Mr. Ankur Saigal, Adv.
Mr. E.C. Agrawala, Adv.

State of Telangana

Mr. S. Udaya Kumar Sagar, Adv.
Mr. Krishna Kumar Singh, Adv.

State of Gujarat

Ms. Hemantika Wahi, Adv.
Ms. Jesal Wahi, Adv.
Ms. Puja Singh, Adv.

State of Jharkhand

Mr. Tapes Kumar Singh, Adv.
Mr. Kumar Anurag Singh, Adv.
Mr. Mohd. Waquas, Adv.

Govt. of Puducherry

Mr. V.G. Pragasam, Adv.
Mr. S.J. Aristotle, Adv.
Mr. Prabu Ramasubramanian, Adv.

ELI

Mr. Mohit Ram, Adv.
Ms. Monisha Handa, Adv.
Mr. Neeraj Kumar, Adv.

State of Assam

Mr. Riku Sarma, Adv.
Mr. Navnit Kumar, Adv.
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State of WB	Mr. Soumitra G. Chaudhuri, Adv. Mr. Anip Sachthey, Adv.
State of Nagaland	Ms. K. Enatoli Sema, Adv. Mr. Amit Kumar Singh, Adv. Mr. Balaji Srinivasan, Adv.
State of HP	Mr. J.S. Attri, Sr. Adv. Mr. Varinder Kumar Sharma, Adv. Mr. Sumeet Prakash, Adv.
State of Maharashtra	Ms. Asha Gopalan Nair, Adv. Mr. A.P. Mayee, Adv. Mr. A. Selvin Raja, Adv.
A&N Administration	Mr. K.V. Jagdishvaran, Adv. Ms. G. Indira, Adv.
State of Sikkim	Ms. Aruna Mathur, Adv. Mr. Yusuf Khan, Adv. Mr. K. Vijay Kumar, Adv. M/s Arputham Aruna & Co., Adv.
State of Goa	Mr. Ninad Laud, Adv. Mr. Karan Mathur, Adv. Mr. Jayant Mohan, Adv.
State of Manipur	Mr. Sapam Biswajit Meitei, Adv. Mr. Z.H. Issac Haiding, Adv. Mr. Ashok Kumar Singh, Adv.
State of Rajasthan	Mr. Shiv Mangal Sharma, Adv. Mr. Shrey Kapoor, Adv. Ms. Ruchi Kohli, Adv.
State of HP	Mr. Suryanarayana Singh, AAG Ms. Pragati Neekhara, Adv.
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State of Mizoram	Mr. K.N. Madhusoodhanam, Adv. Mr. T.G.N. Nair, Adv.
NCT of Delhi	Mr. J.M. Kalia, Adv.
State of Haryana	Mr. B.K. Satija, AAG
IA 5 of 2014 in CWP 833/13	Mr. Sumit Attri, Adv. Mr. E.C. Agrawala, Adv.

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Mr. Prashant, Adv.
Mr. B. Balaji, Adv.
Mr. R. Rakesh Sharma, Adv.
Ms. R. Shase, Adv.

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Mr. Gopal Singh, Adv.
Mr. Amit Sharma, Adv.
Mr. Dipesh Sinha, Adv.

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Mr. Saikrishna Rajagopal, Adv.
Mr. Juhen George, Adv.
Mr. Arjun Ranganathan, Adv.
Mr. Nikhil Nayyar, Adv.
Mr. Kamal Mohan Gupta, Adv.
Ms. C. K. Sucharita, Adv.
Mr. Mishra Saurabh, Adv.
Mr. Garvesh Kabra, Adv.
Mr. T. G. Narayanan Nair, Adv.
Ms. Anitha Shenoy, Adv.

UPON hearing the counsel the Court made the following

ORDER

The matters require considerable time for hearing. Therefore, we direct the matters to be listed for hearing in the second week of July, 2015 after obtaining appropriate orders from Hon'ble the Chief Justice of India.

In the meanwhile, it is brought to our notice that in certain quarters, Aadhar identification is being insisted upon by the various authorities, we do not propose to go into the specific instances.

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Since Union of India is represented by learned Solicitor General and all the States are represented through their respective counsel, we expect that both the Union of India and States and all their functionaries should adhere to the Order passed by this Court on 23rd September, 2013.

Pleadings be completed before the end of April, 2015.

All the parties are at liberty to file any further affidavit or documents, if they so wish.

(DEEPAK MANSUKHANI)

(TAPAN KR. CHAKRABORTY)

COURT MASTER

COURT MASTER

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.494 OF 2012

Justice K.S. Puttaswamy (Retd.) & Another

... Petitioners

Versus

Union of India & Others

... Respondents

WITH

TRANSFERRED CASE (CIVIL) NO.151 OF 2013

TRANSFERRED CASE (CIVIL) NO.152 OF 2013

WRIT PETITION (CIVIL) NO.829 OF 2013

WRIT PETITION (CIVIL) NO.833 OF 2013

WRIT PETITION (CIVIL) NO.932 OF 2013

TRANSFER PETITION (CIVIL) NO.312 OF 2014

TRANSFER PETITION (CIVIL) NO.313 OF 2014

WRIT PETITION (CIVIL) NO.37 OF 2015

WRIT PETITION (CIVIL) NO.220 OF 2015

TRANSFER PETITION (CIVIL) NO.921 OF 2015

CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C)

494/2012

CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C)

494/2012

ORDER

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1. In this batch of matters, a scheme propounded by the Government of India popularly known as "Aadhaar Card Scheme" is under attack on various counts. For the purpose of this order, it is not necessary for us to go into the details of the nature of the scheme and the various counts on which the scheme is attacked. Suffice it to say that under the said scheme the Government of India is collecting and compiling both the demographic and biometric data of the residents of this country to be used for various purposes, the details of which are not relevant at present.

2. One of the grounds of attack on the scheme is that the very collection of such biometric data is violative of the "right to privacy". Some of the petitioners assert that the right to privacy is implied under Article 21 of the Constitution of India while other petitioners assert that such a right emanates not only from Article 21 but also from various other articles embodying the fundamental rights guaranteed under Part-III of the Constitution of India.

3. When the matter was taken up for hearing, Shri Mukul Rohatgi, learned Attorney General made a submission that in view of the judgments of this Court in *M.P. Sharma & Others v. Satish Chandra & Others*, AIR 1954 SC 300 and *Kharak Singh v. State of U.P. & Others*, AIR 1963 SC 1295, (decided by Eight and Six Judges respectively) the legal position regarding the existence of the fundamental right to privacy is doubtful. Further, the learned

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Attorney General also submitted that in a catena of decisions of this Court rendered subsequently, this Court referred to "right to privacy", contrary to the judgments in the abovementioned cases which resulted in jurisprudentially impermissible divergence of judicial opinions.

"A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction.

[See: M.P. Singh & Others v. Satish Chandra & Others, AIR 1954 SC 300, page 306 para 18]

"... Nor do we consider that Art. 21 has any relevance in the context as was sought to be suggested by learned counsel for the petitioner. As already pointed out, the right of privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movement of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III." [See: Kharak Singh v. State of U.P. & Others, AIR 1963 SC 1295, page 1303 para 20]

[Emphasis supplied]

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4. Learned Attorney General submitted that such impermissible divergence of opinion commenced with the judgment of this Court in *Gobind v. State of M.P. & Another*, (1975) 2 SCC 148, which formed the basis for the subsequent decision of this Court wherein the "right to privacy" is asserted or at least referred to. The most important of such cases are *R. Rajagopal & Another v. State of Tamil Nadu & Others*, (1994) 6 SCC 632 (popularly known as *Auto Shanker's case*) and *People's Union for Civil Liberties (PUCL) v. Union of India & Another*, (1997) 1 SCC 301.

5. All the judgments referred to above were rendered by smaller Benches of two or three Judges.

6. Shri K.K. Venugopal, learned senior counsel appearing for one of the respondents submitted that the decision of this Court in *Gobind (supra)* is not consistent with the decisions of this Court in *M.P. Sharma* and *Kharak Singh*. He submitted that such divergence is also noticed by the academicians, Shri F.S. Nariman, Senior Advocate of this Court and Shri A.M. Bhattacharjee¹, Former Chief Justice, High Court at Calcutta and High Court at Bombay.

7. Therefore, it is submitted by the learned Attorney General and Shri Venugopal that to settle the legal position, this batch of matters is required to be heard by a larger Bench of this Court as these matters throw up for debate important questions – (i) whether there is any "right to privacy" guaranteed under our Constitution. (ii) If such a right exists, what is the source and what are the contours

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of such a right as there is no express provision in the Constitution adumbrating the right to privacy. It is therefore submitted that these batch of matters are required to be heard and decided by a larger bench of at least five Judges in view of the mandate contained under Article 145(3)2 of the Constitution of India.

8. On behalf of the petitioners Shri Gopal Subramaniam and Shri Shyam Divan, learned senior counsel very vehemently opposed the suggestion that this batch of matters is required to be heard by a larger bench. According to them:

(i) The conclusions recorded by this Court in *R. Rajagopal* and *PUCL* are legally tenable for the reason that the observations made in *M.P. Sharma* regarding the absence of right to privacy under our Constitution are not part of ratio decidendi of that case and, therefore, do not bind the subsequent smaller Benches.

(ii) Coming to the case of *Kharak Singh*, majority in *Kharak Singh*

did hold that the right of a person not to be disturbed at his residence by the State and its officers is recognized to be a part of a fundamental right guaranteed under Article 21 which is nothing but an aspect of privacy. The observation in para 20 of the majority judgment at best can be construed only to mean that there is no fundamental right of privacy against the State's authority to keep surveillance on the activities of a person. Even such a conclusion cannot be good law anymore in view of the express declaration

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made by a seven-Judge bench decision of this Court in *Maneka Gandhi v. Union of India & Another*, (1978) 1 SCC 2483.

(iii) They further argued that both *M.P. Sharma (supra)* and *Kharak Singh (supra)* came to be decided on an interpretation of the Constitution based on the principles expounded in *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27. Such principles propounded by *A.K. Gopalan* themselves came to be declared wrong by a larger Bench of this Court in *Rustom Cavasjee Cooper v. Union of India*, (1970) 1 SCC 248. Therefore, there is no need for the instant batch of matters to be heard by a larger Bench.

9. It is true that *Gobind (supra)* did not make a clear declaration that there is a right to privacy flowing from any of the fundamental rights guaranteed under Part-III of the Constitution of India, but observed that "Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute".

This Court proceeded to decide the case on such basis.

10. However, the subsequent decisions in *R. Rajagopal (supra)* and

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PUCL (supra), the Benches were more categorical in asserting the existence of "right to privacy". While *R. Rajagopal's case* held that the "right to privacy" is implicit under Article 21 of the Constitution, *PUCL's case* held that the "right to privacy" insofar as it pertains to speech is part of fundamental rights under Articles 19(1)(a) and 21 of the Constitution.

11. Elaborate submissions are made at the bar by the learned counsel for the petitioners to demonstrate that world over in all the countries where Anglo-Saxon jurisprudence is followed, 'privacy' is recognised as an important aspect of the liberty of human beings. It is further submitted that it is too late in the day for the Union of India to argue that the Constitution of India does not recognise privacy as an aspect of the liberty under Article 21 of the Constitution of India. At least to the extent that the right of a person to be secure in his house and not to be disturbed unreasonably by the State or its officers is expressly recognized and protected in *Kharak Singh (supra)* though the majority did not describe that aspect of the liberty as a right of privacy, it is nothing but the right of privacy.

12. We are of the opinion that the cases on hand raise far reaching questions of importance involving interpretation of the Constitution. What is at stake is the amplitude of the fundamental rights including that precious and inalienable right under Article 21. If the observations made in *M.P. Sharma (supra)* and *Kharak*

Singh(supra) are to be read literally and accepted as the law of this country, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty under Article 21 would be denuded of vigour and vitality. At the same time, we are also of the opinion that the institutional integrity and judicial discipline require that pronouncement made by larger Benches of this Court cannot be ignored by the smaller Benches without appropriately explaining the reasons for not following the pronouncements made by such larger Benches. With due respect to all the learned Judges who rendered the subsequent judgments - where right to privacy is asserted or referred to their Lordships concern for the liberty of human beings, we are of the humble opinion that there appears to be certain amount of apparent unresolved contradiction in the law declared by this Court.

13. Therefore, in our opinion to give a quietus to the kind of controversy raised in this batch of cases once for all, it is better that the ratio decidendi of *M.P. Sharma* (supra) and *Kharak Singh*(supra) is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the right to privacy is either asserted or referred be examined and authoritatively decided by a Bench of appropriate strength.

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14. We, therefore, direct the Registry to place these matters before the Hon'ble the Chief Justice of India for appropriate orders.

.....J.

(J. Chelameswar)

.....J.

(S.A. Bobde)

.....J.

(C. Nagappan)

New Delhi

August 11, 2015

22 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.494 OF 2012

Justice K.S. Puttaswamy (Retd.) & Another ... Petitioners

Versus

Union of India & Others ... Respondents

WITH

TRANSFERRED CASE (CIVIL) NO.151 OF 2013

TRANSFERRED CASE (CIVIL) NO.152 OF 2013

WRIT PETITION (CIVIL) NO.829 OF 2013

WRIT PETITION (CIVIL) NO.833 OF 2013

WRIT PETITION (CIVIL) NO.932 OF 2013

TRANSFER PETITION (CIVIL) NO.312 OF 2014

TRANSFER PETITION (CIVIL) NO.313 OF 2014

WRIT PETITION (CIVIL) NO.37 OF 2015

WRIT PETITION (CIVIL) NO.22C OF 2015

TRANSFER PETITION (CIVIL) NO.921 OF 2015

CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C)

494/2012

CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C)

494/2012

ORDER

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Having regard to importance of the matter, it is desirable
that the matter be heard at the earliest.

.....J.

(J. Chelameswar)

.....J.

(S.A. Bobde)

.....J.

(C. Nagappan)

New Delhi

August 11, 2015

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REPORTABLE

IN THE SUPREME COURT OF INDIA
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WRIT PETITION (CIVIL) NO.37 OF 2015

WRIT PETITION (CIVIL) NO.220 OF 2015

TRANSFER PETITION (CIVIL) NO.921 OF 2015

CONTEMPT PETITION (CIVIL) NO.144 OF 2014 IN WP(C)

494/2012

CONTEMPT PETITION (CIVIL) NO.470 OF 2015 IN WP(C)

494/2012

INTERIM ORDER

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After the matter was referred for decision by a larger Bench, the learned counsel for the petitioners prayed for further interim orders. The last interim order in force is the order of this Court dated 23.9.2013 which reads as follows:-

"....All the matters require to be heard finally. List all matters for final hearing after the Constitution Bench is over. In the meanwhile, no person should suffer for not getting the Aadhaar card in spite of the fact that some authority had issued a circular making it mandatory and when any person applies to get the Aadhaar card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant."

It was submitted by Shri Shyam Divan, learned counsel for the petitioners that the petitioners, having pointed out a serious breach of privacy in their submissions, preceding the reference, this Court may grant an injunction restraining the authorities from proceeding further in the matter of obtaining biometrics etc. for an Aadhaar card. Shri Shyam Divan submitted that the biometric information of an individual can be circulated to other authorities or corporate bodies which, in turn, can be used by them for commercial exploitation and, therefore, must be stopped.

The learned Attorney General pointed out, on the other hand, that this Court has at no point of time, even while making the interim order dated 23.9.2013 granted an injunction restraining the Unique Identification Authority of India from going ahead and obtaining biometric or other information from a citizen for the purpose of a Unique Identification Number, better known as "Aadhaar card". It was further submitted that the respondents have gone ahead with the project and have issued Aadhaar cards to about 90% of the population. Also that a large amount of money has been spent by the Union Government on this project for issuing Aadhaar cards and that in the circumstances, none of the well-known considerations for grant of injunction are in favour of the petitioners.

The learned Attorney General stated that the respondents do not share any personal information of an Aadhaar card holder through biometrics or otherwise with any other person or authority. This statement allays the apprehension for now, that there is a widespread breach of privacy of those to whom an Aadhaar card has been issued. It was further contended on behalf of the petitioners that there still is breach of privacy. This is a matter which need not be gone into further at this stage.

The learned Attorney General has further submitted that the Aadhaar card is of great benefit since it ensures an effective implementation of several social benefit schemes of the

Governmentlike MGNREGA, the distribution of food, ration and kerosene through PDS system and grant of subsidies in the distribution of LPG. It was, therefore, submitted that restraining the respondents from issuing further Aadhaar cards or fully utilising the existing Aadhaar cards for the social schemes of the Government should be allowed.

The learned Attorney General further stated that the respondent Union of India would ensure that Aadhaar cards would only be issued on a consensual basis after informing the public at large about the fact that the preparation of Aadhaar card involving the parting of biometric information of the individual, which shall however not be used for any purpose other than a social benefits schemes.

Having considered the matter, we are of the view that the balance of interest would be best served, till the matter is finally decided by a larger Bench if the Union of India or the UIDAI proceed in the following manner:-

1. The Union of India shall give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain an Aadhaar card;
2. The production of an Aadhaar card will not be a condition for obtaining any benefits otherwise due to a citizen;

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3. The Unique Identification Number or the Aadhaar card will not be used by the respondents for any purpose other than the PDSScheme and in particular for the purpose of distribution of food grains, etc. and cooking fuel, such as kerosene. The Aadhaar card may also be used for the purpose of the LPG Distribution Scheme;

4. The information about an individual obtained by the Unique Identification Authority of India while issuing an Aadhaar card shall not be used for any other purpose, save as above, except as may be directed by a Court for the purpose of criminal investigation.

Ordered accordingly.

.....J.
(J. Chelameswar)

.....J.
(S.A. Bobde)

.....J.
(C. Nagappan)

New Delhi

August 11, 2015

//TRUE TYPED COPY//

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ITEM NO.501

COURT NO.1

SECTION PIL(W)

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 494/2012

JUSTICE K.S.PUTTASWAMY(RETD)& ANR

... Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

... Respondent(s)

(With appln.(s) for interim relief and appln.(s) for impleadment/directions and appln.(s) for impleadment and appln.(s) for impleadment and appln.(s) for impleadment and appln.(s) for impleadment , permission to file addl.documents and permission to file addl.affidavitand Office Report)

WITH T.C.(C) No. 151/2013

(With appln.(s) for modification of court's order and appln.(s) for impleadment as party respondent)

T.C.(C) No. 152/2013

With W.P.(C) No. 829/2013

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(With appln.(s) for interim relief and appln.(s) for impleadment/directions and appln.(s) for impleadment and appln.(s) for impleadment and appln.(s) for impleadment and Office Report)

W.P.(C) No. 833/2013

(With appln.(s) for permission to file additional documents and appln.(s) for impleadment and appln.(s) for directions and appln. (s) for impleadment and appln.(s) for impleadment and Office Report)

W.P.(C) No. 932/2013

(With appln.(s) for clarification of court's order and appln.(s) for directions and appln.(s) for interim directions and Office Report)

T.P.(C) No.

312/2014

(With Office Report)

T.P.(C) No. 313/2014

(With Office Report)

W.P.(C) No. 37/2015

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(With appln.(s) for permission to file additional documents and
appln.(s) for interim stay and appln.(s) for permission to file
additional documents and appln.(s) for directions and appln.(s)
for impleadment and Office Report)

W.P.(C) No. 220/2015 (With appln.(s) for
directions and Office Report)

T.P.(C) No.

921/2015 (With
Office Report)

CONMT.PET.(C) No. 144/2014 In W.P.(C) No. 494/2012
(With appln.(s) for directions and appln.(s) for directions and
Office Report)

CONMT.PET.(C) No. 470/2015 In W.P.(C) No. 494/2012
(With appln.(s) for exemption from filing O.T. and Office Report)

SLP(GrI) No. 2524/2014
(With Office Report)

CONMT.PET.(C) No. 674/2015 In W.P.(C) No. 829/2013
(With Office Report)

Date : 15/10/2015 These petitions/cases were called on for
hearing today.

CORAM :

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HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE M.Y. EQBAL

HON'BLE MR. JUSTICE C. NAGAPPAN

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) in

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Mr. Anuj Sarma, Adv.

Ms. Niharika, Adv.

Ms. Titisha Mukherjee, Adv. For

M/s. K.J. John & Co., Adv.

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Ms. Aishwarya Bhati, Adv.

Mr. Talha Abdul Rahman, Adv.

Ms. Anusha Ramesh, Adv.

Mr. Prateek Joshi, Adv.

Ms. Neha Meena, Adv.

Mr. Anirban Sen, Adv.

Mr. Adarshtiwari, Adv.

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Mr. Dinesh, Adv.

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Mr. Sanjay Kumar Yadav, Adv.

Mr. Anish Kumar Gupta, Adv.

Mr. Aditya Kumar Dubey, Adv.

Mr. Gaurav Kumar, Adv.

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Mr. P.R. Kovilan, Adv. Mr. V.

Vasudevan, Adv.

Ms. Pinky Anand, ASG Mr. S.S.

Rawat, Adv.

TP(C) No. 921/2015 Mr. D.S. Mahra, Adv.

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TC(C) No. 152/2013

Ms. Meenakshi Arora, Sr. Adv.
Mr. Rahul Narayan, Adv.
Mr. Mohit Singh, Adv.
Mr. Vijay Kumar, Adv.
Mr. Amit Meharia, Adv.
Mr. Dhritiman Das, Adv. for
M/s. Meharia & Company, Adv.

WP(C) no. 932/2013

CC(C) no. 470/2015

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Ms. Nitya Ramakrishnan, Adv.
Mr. Shadan Farasat, Adv.
Ms. Guneet Kaur, Adv.
Ms. Rita Singh, Adv.
Mr. Vaibhav Tiwari, Adv.

UOI

Mr. Mukul Rohatgi, AG
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Ms. Sadhana Sandhu, Adv.
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Mr. Kaushal Yadav, Adv.
Mr. A. Sen Gupta, Adv.
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Ms. Binu Tamta, Adv.
Mr. Meenesh Kr. Dubey, Adv.
Mrs. Anil Katiyar, Adv.
Mr. D. S. Mahra, Adv.
Mr. Vakul Sharma, Adv.
Mr. J. M. Kalia, Adv.
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Ms. Somya Rathore, Adv.
Ms. Kritika Sachdeva, Adv.
Ms. Saudamini Sharma, Adv.
Ms. Snibha Mehra, Adv.
Mr. Karan Seth, Adv.
Mr. Rishabh Jain, Adv.
Mr. D. S. Mahra, Adv.

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SEBI	Mr. Tushar Mehta, ASG Mr. Avinash Tripathi, Adv. Mr. Harish Pandey, Adv.
I.A.No.31/2015 in W.P.(C)NO.494/12	Dr. Lalit Bhasin, Adv. Mr. Nina Gupta, Adv. Mr. Mudit Sharma, Adv. Mr. Parvez Khan, Adv. Ms. Palak Chadha, Adv.
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RBI	Mr. Jayant Bhushan, Sr. Adv. Mr. Kuldeep S. Parihar, Adv. Mr. H.S. Parihar, Adv.
State of Goa	Mr. Ninad Laud, Adv. Mr. Karan Mathur, Adv. Mr. Jayant Mohan, Adv.
State of Nagaland	Ms. K. Enatoli Sema, Adv. Mr. Edward Belho, Adv. Mr. Amit Kumar Singh, Adv.
A&N Administration	Mr. K.V. Jagdishvaran, Adv. Ms. G. Indira, Adv.
State of Assam	Mr. Navnit Kumar, Adv. Ms. Deepika Ghatowor, Adv. For M/s. Corporate Law Group, Adv.
State of HP	Mr. J.S. Attri, Sr. Adv. Mr. Suryanarayana Singh, Sr. AAG Mr. Varinder Kumar Sharma, Adv. Mr. Sumeet Prakash, Adv. Ms. Pragati Neekhara, Adv.
State of Maharashtra	Mr. Nachiketa Joshi, Adv. Mr. Nishant Katneshwarkar, Adv. Mr. Gopal Subramaniam, Sr. Adv.
I.A.NO.5/2014 in W.P.(C)NO.833/2013	Mr. Priyadarshi Banerjee, Adv. Mr. Praveen Sehrawat, Adv. Mr. Saransh Jain, Adv. Mr. E.C. Agrawala, Adv.
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State of AP	Mr. Guntur Prabhakar, Adv. Ms. Prerna Singh, Adv.
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State of Sikkim	Ms. Aruna Mathur, Adv. Mr. Avnessh Arputham, Adv. Ms. Anuradha Arputham, Adv. For M/s. Arputham Aruna & Co., Adv.
ECI	Mr. Ashok Desai, Sr. Adv. Mr. S. K. Mendiratta, Adv. Ms. Anu Bindra, Adv. Mr. Mohit D. Ram, Adv.
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State of Arunachal Pradesh	Mr. Rituraj Biswas, Adv. Ms. Varsha Poddar, Adv.
Pradesh	Mr. Anil Shrivastav, Adv.
UT Chandigarh	Mr. Rituraj Biswas, Adv. Ms. Vimla Sinha, Adv. Mr. Gopal Singh, Adv.
State of Kerala	Mr. Jogy Scaria, Adv. Ms. Beena Victor, Adv.
State of Punjab	Mr. Sanchar Anand, AAG Mr. Nishant Bishnoi, Adv. Mr. Apoorv Singhal, Adv. Mr. J. S. Chhabra, Adv. Mr. Kuldip Singh, Adv.
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	Ms. Sylona Mohapatara, Adv.
Govt. of Puducherry	Mr. V.G. Pragasam, Adv.
	Mr. Prabu Ramasubramanian, Adv.
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	Mr. Priyadarshi Banerjee, Adv.
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	Mr. Divyesh Maheshwari, Adv.
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	Ms. Mumtaz Bhalla, Adv.
	Mr. Abhay Kumar, Adv.
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I.A. Nos. 9 & 10/2013 In WP(C) NO. 494/12 State of Gujarat	Mr. Garvesh Kabra, Adv.
	Ms. Pooja Kabra, Adv.
	Ms. Hemantika Wahi, Adv.
	Ms. Jesal Wahi, Adv.
	Ms. Puja Singh, Adv.
	Ms. C. K. Sucharita, Adv.
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	Mr. Dinkar Kalra, Adv.
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	Mr. Sanjay Kr. Visen, Adv.
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	Mr. Gaurav Srivastava, Adv.
State of M.P.	Mr. Naveen Sharma, adv.
	Ms. Swati Bhushan Sharma, Adv.
	Mr. Mishra Saurabh, Adv.
I.A. No. 24 & 25/15	Mr. K. Ramamoorthy, Sr. Adv.

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In WP(C)No.494/12

Mr.Dipak K. Nag, Adv.
Mr.Parmanand Gaur, Adv.
Ms.ApurvaUpamanyu, Adv.

I.A.Nos.22-23/15

In W.P.(C)NO.494/2012

Mr.SanjayKapur,Adv.
Mr.AnmolChandan, Adv.
Mr.AnoopJ.Bhambani, Sr.Adv.
Dr.AbhishekAttrey, Adv.
Mr.RavindraLakhande, Adv.
Mr.SumitRajora, Adv.
Mr.J.S.Attri, Sr.adv.
Mr.Suryanarayana Singh,
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State of H.P.

Intervenor

Pen.Fun.Reg:&D.A.

Mr.ChandraNandJha, Adv.
Mr.SaikrishnaRajagopal, Adv.
Mr.Juhen George, Adv.
Mr.ArjunRananathan, Adv.
Mr.R.Sudhinder, Adv.
Ms.EktaBhasin, Adv.
Mr.AshokMathur, Adv.

Mr.ShivMangalSharma,Adv.
Mr.Ankit Shah, Adv.
Mr.PuneetParihar, Adv.
Mr.Shrey Kapoor, Adv.
Mr.Nishit Agrawal, Adv.
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Mr.VivekRanjanMohanty, Adv.
Mr.Adhiraj Singh Rajawat, Adv.
Mr.ShantiMukharjee, Adv.
Mr.ManojK.Mishra, Adv.
Ms.ShreyaMukharjee, Adv.
Mr.SandeepKr.Dwivedi, Adv.
Mr.ShivamVerma Adv.
Mr.NikhilNayyar, Adv.
Mr.Ranjan Mukherjee, Adv.
Ms.AnithaShenoy, Adv.

I.A.NO.26/15

Ms.RuchiKohli, Adv.
Mr.DinkarKalra, Adv.

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Mr. Mohit D. Ram, Adv.

UPON hearing the counsel the Court made the following

ORDER

All the applications for intervention and impleadment be heard along with the respective main matters.

Application(s) filed by the Union of India/UIDAI is/are disposed of.

Since there is some urgency in the matter, we request the learned Chief Justice of India to constitute a Bench for final hearing of these matters at the earliest.

Ordered accordingly.

(G.V. Ramana)

(Vinod Kulvi)

AR-cum-PS

Asstt. Registrar

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 494 OF 2012

JUSTICE K.S. PUTTASWAMY (RETD) & ANR. ..PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

.. RESPONDENT

T.C.(C) No. 151/2013

T.C.(C) No. 152/2013

WRIT PETITION(C) No. 829/2013

WRIT PETITION(C) No. 833/2013

WRIT PETITION(C) No. 932/2013

TRANSFER PETITION(C) No. 312/2014

TRANSFER PETITION(C) No. 313/2014

WRIT PETITION(C) No. 37/2015

WRIT PETITION(C) No. 220/2015

TRANSFER PETITION(C) No. 921/2015

CONMT.PET.(C) No. 144/2014

40
In

WRIT PETITION(C) No. 494/2012

CONMT.PET.(C) No. 470/2015

In

WRIT PETITION(C) No. 494/2012

SPECIAL LEAVE PETITION (CRL.) No. 2524/2014

CONMT.PET.(C) No. 674/2015

In

WRIT PETITION(C) No. 829/2013

ORDER

1. This Bench is constituted only for the purpose of deciding the applications filed by the Union of India seeking certain clarification/modification in the orders passed by a Bench of three learned Judges of this Court dated 11.08.2015.
2. We have heard Shri Mukul Rohtagi, learned Attorney General for India, Shri Shyam Divan, Shri Soli Sorabjee and Shri Gopal Subramaniam, learned senior counsels *in extenso*.

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3. After hearing the learned Attorney General for India and other learned senior counsels, we are of the view that in paragraph 3 of the Order dated 11.08.2015, if we add, apart from the other two Schemes, namely, P.D.S. Scheme and the L.P.G. Distribution Scheme, the Schemes like The Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), National Social Assistance Programme (Old Age Pensions, Widow Pensions, Disability Pensions) Prime Minister's Jan Dhan Yojana (PMJDY) and Employees' Provident Fund Organisation (EPFO) for the present, it would not dilute earlier order passed by this Court. Therefore, we now include the aforesaid Schemes apart from the other two Schemes that this Court has permitted in its earlier order dated 11.08.2015.
4. We impress upon the Union of India that it shall strictly follow all the earlier orders passed by this Court commencing from 23.09.2013.
5. We will also make it clear that the Aadhaar card Scheme is purely voluntary and it cannot be made mandatory, till the matter is finally decided by this Court one way or the other.

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6. All the applications for intervention and impleadment be heard along with the respective main matters.
 7. Application(s) for modification/ clarification filed by Union of India/UIDAI is/are disposed of.
 8. Since there is some urgency in the matter, we request the learned Chief Justice of India to constitute a Bench for final hearing of these matters at the earliest.

Ordered accordingly.

.....CJI
[H.L. DATTU]
.....J.
[M.Y. EQBAL]
.....J.
[G. NAGAPPAN]
.....J.
[ARUN MISHRA]
.....J.
[AMITAVA ROY]

NEW DELHI, OCTOBER 15, 2015.

//TRUE TYPED COPY//

43

IN THE SUPREME COURT OF INDIA
(C)
CONTEMPT PETITION NO. 2016

IN
(C)
WRIT PETITION NO. 494/2012

IN THE MATTER OF:

Mathew Thomas
18/A, Adarsh Vista,
Basavanagar,
Bangalore – 560027.

... Petitioner

VERSUS

1. K.D. Tripathi,
Secretary,
Room No. 206A,
Ministry of Petroleum & Natural Gas,
"A" Wing, 2nd Floor, Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi – 110001

2. B. Ashok,
Chairman & Managing Director,
Indian Oil Corporation Ltd.
3079/3 J B Tito Marg, Sadqanagar
New Delhi – 110049

... Contemnors

AND IN THE MATTER OF:

IN WRIT PETITION NO. 494/2012

Justice K.S. Puttaswamy (Retd) & Anr

... Petitioner

VERSUS

Union of India & Ors.

... Respondents

**CONTEMPT PETITION UNDER ARTICLE 129 OF THE
CONSTITUTION OF INDIA AND UNDER RULE 3 OF
'THE RULES TO REGULATE PROCEEDINGS FOR
CONTEMPT OF THE SUPREME COURT, 1975' READ
WITH SECTION 23 OF THE 'CONTEMPT OF COURTS
ACT, 1971' AND ARTICLE 145 OF THE
'CONSTITUTION OF INDIA'**

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TO
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED:

MOST RESPECTFULLY SHEWETH:

1. The Petitioner is filing the present petition for initiation of contempt proceedings against the Respondents / Contemnors for willful and deliberate violation of orders dated 23.09.2013, 16.03.2015, 11.08.2015 and 15.10.2015 passed by this Hon'ble Court in W.P.(Civil) 494/2012.
2. The Petitioner is the Petitioner in the writ petition - W.P. 37/2015, which has been filed challenging the constitutionality of Unique Identification Project or the Aadhaar Scheme launched by the Unique Identification Authority of India in 2010. The captioned writ petition is being heard by this Hon'ble Court along with other writ petitions, which also challenge the Unique Identification Project or the Aadhaar Scheme on diverse grounds.
3. This Hon'ble Court had on 23.09.2013, while issuing notice in the captioned writ petition, directed that "no person should suffer for not getting the Aadhaar card inspite of the fact that some authority had issued a

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circular making it mandatory and when any person applies to get the Aadhaar Card voluntarily, it may be checked whether that person is entitled for it under the law and it should not be given to any illegal immigrant".

4. Further, on 24.03.2014, this Hon'ble Court, while issuing notice in SLP (Crl) 2524/2014 and tagging the Petition along with the batch of Petitions including the captioned Writ Petitions, led by W.P.(C) 494/2012, reiterated its earlier 23.09.2013 Order. This Court in its Order on 24.03.2014 further added that "All the authorities are directed to modify their forms/circulars/likes so as to not compulsorily require the Aadhaar number in order to meet the requirement of the interim order passed by this Court forthwith." The copy of Order dated 24.03.2014 passed by this Hon'ble Court in SLP (Crl.) No.2524/2014 is annexed herewith and marked as ANNEXURE P-1 [Pages 54-55]
5. Further, on 16.03.2015, this Hon'ble Court upon being apprised of violations of its order dated 23.09.2013 by several governmental agencies and authorities, had again directed compliance of its order dated 23.09.2013.
6. Further, on 11.08.2015, this Hon'ble Court, while referring the petitions and all connected matters to a Constitution Bench, had ordered that the production of Aadhaar card

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will not be a condition for obtaining any benefits otherwise due to a citizen. The said order also directed the Union of India to give wide publicity in the electronic and print media including radio and television networks that it is not mandatory for a citizen to obtain Aadhaar. Further, the said order limited the use of Aadhaar only for the purposes of distribution of food grain under the PDS scheme and the distribution of LPG and Kerosene.

7. Further, on 15.10.2015, this Hon'ble Court while partially allowing an Application for modification of the order dated 11.08.2015 by the Union of India to include certain other schemes under permitted uses for Aadhaar, reiterated that all interim orders of the Hon'ble Court starting from 23.09.2013 must be followed by Union and all other entities and also reiterated that Aadhaar enrolment shall be purely on a voluntary basis.

8. The aforesaid orders of this Hon'ble Court dated 23.09.2013, 24.03.2014, 16.03.2015, 11.08.2015 and 15.10.2015 clearly reveal that any measure that has the effect of rendering the enrolment for the Unique Identification Project or the Aadhaar Scheme mandatory or compulsory has been proscribed. While the various issues of facts, law and constitutional vires raised in the petitions challenging the UD project are pending

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adjudication by this Hon'ble Court, The Unique Identification Project or the Aadhaar Scheme has been permitted to continue only on a voluntary basis with the explicit direction that no person shall suffer on account of not possessing an Aadhaar Card/number, which is issued under this scheme. The continuing distress faced by many people including those who had been writing to this court complaining of violation of the court's orders led to the abovementioned 24.03.2014 Order which says that the forms/circulars must be reworked to indicate that Aadhaar is not a prerequisite to access any service provided by any agency or authority.

9. The present petition is directed against the Respondents / Contemnors, who have, acting on behalf of the Government of Karnataka, taken decisions or issued directions, which render the Unique Identification Project or the Aadhaar Scheme compulsory and therefore in contumacious violation of this Court's Orders on different dates as mentioned above.

10. The orders of this Hon'ble Court have been brazenly flouted by the Respondents / Contemnors in the following manner:

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I. The Contemnors have allowed the issuance of a circular dated 01.02.2016 to all the Indane gas distributors, *inter alia*, calling upon them to obtain Aadhaar details of all BTC (Bank-transfer-compliant) customers and that it is mandatory for customers to provide Aadhaar numbers to receive LPG subsidy. The copy of the circular dated 01.02.2016 is annexed herewith and marked as ANNEXURE P-2 [Pages 56-58]. The existence of such a circular and it being pasted in all Indane gas agencies was brought to my notice by one customer Ms. Reshma who was denied LPG refills for want of Aadhaar by dealers/distributors in one Sudheendhra Indane Gas agency in HRBR layout in Bangalore. Subsequent to that, on 5th May 2016, the Petitioner wrote to the Contemnors herein to withdraw the said circular within seven days of receipt of my letter, pointing out that it is in violation of this Hon'ble Courts orders as mentioned above and also not to deny any service including LPG refills for want of Aadhaar details as the same is in violation of this Hon'ble Court's orders. The copy of the Letter dated 05.05.2016 is annexed herewith and marked as ANNEXURE P-3 [Pages 59-66]

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II. Further, there has been no action from the Contemnors and I hear a number of similar complaints from other people as well.

11. The Petitioner submits that the above measures and actions and inactions of the Respondents / Contemnors, taken on behalf of the Government of India Ministry of Petroleum & Natural Gas and also the Indian Oil Corporation, constitute a wilful and deliberate disobedience of the orders of this Hon'ble Court dated 23.09.2013, 16.03.2015, 11.08.2015 and 15.10.2015 passed in matters led by W.P.(Civil) 494/2012. The aforesaid measures and actions also betray an utter disregard on the part of the Respondents / Contemnors for the directions passed by this Hon'ble Court and fully warrant the initiation of contempt proceedings against them.

12. Even as the Union Government has been directed to give "wide publicity through all means, electronic and TV informing that UID / Aadhaar is voluntary, the Contemnors have proceeded to do just the opposite of making it mandatory in defiance of the repeated orders of this Hon'ble Court.

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13. That the Petitioner states that he has not filed any other Contempt Petition for non-compliance of the Orders dated 23.09.2013, 16.03.2015, 11.08.2015 and 15.10.2015 passed by this Hon'ble Court in W.P.(Civil) 494/2012.

PRAYER

The Petitioner, therefore, most respectfully prays to this Hon'ble Court that it may most graciously be pleased to:

- I. initiate contempt proceedings against the Respondent-Contemnors for willfully and deliberately disobeying and violating orders dated 23.09.2013, 16.03.2015, 11.08.2015 and 15.10.2015 passed by this Hon'ble Court in W.P.(Civil) 494/2012; and the said Respondent accordingly be prosecuted by this Hon'ble Court for committing Contempt of Court.
- II. pass an order quashing the aforementioned circular of the Contemnor dated 01.02.2016;
- III. pass an order directing the Contemnors to immediately issue a clarification in all regional newspapers that Aadhaar is not required as mandatory for any purpose in relation to LPG service including for BTC customers and for LPG refills or for any other purpose and that the earlier

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notification on 01.02.2016 is no longer in force and
paste the same as a notice in gas agencies;

- IV. pass an order directing the Contemnors to allow all those who under such threats and coercion enrolled in the UID / Aadhaar scheme to withdraw their enrolments as not being voluntary;
- V. pass on order directing the Contemnors to identify and compensate to all customers that they have coerced into enrolling for Aadhaar on the pretext that it is mandatory for some purpose or the other in relation to LPG distribution or refill or service; and/or
- VI. pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS PETITIONER, AS IN
DUTY BOUND, SHALL EVER PRAY.

DRAWN & FILED BY:

DRAWN ON: 30.06.2016
FILED ON: 4.07.2016

[MS AISHWARYA BHATI]
ADVOCATE FOR THE PETITIONER

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IN THE SUPREME COURT OF INDIA
CONTEMPT PETITION NO. 2016

IN
WRIT PETITION NO. 494/2012

IN THE MATTER OF:

Mathew Thomas

... Petitioner

VERSUS

K.D. Tripathi & Anr.

... Contemnors

AND IN THE MATTER OF:

IN WRIT PETITION NO. 494/2012

Justice K.S. Puttaswamy (Retd) & Anr

... Petitioner

VERSUS

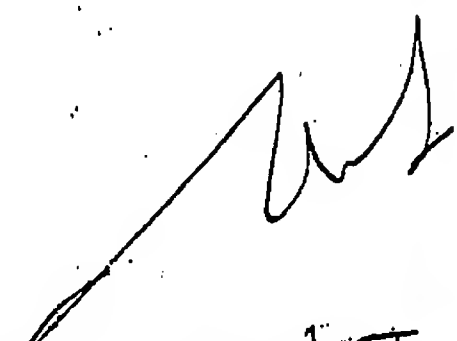
Union of India & Ors.

... Respondents

AFFIDAVIT

I, Mathew Thomas, son of Late T.P. John, R/o No.18-A, AdarshVista, Basavanagar, Bangalore-560037, Karnataka, presently at present at New Delhi, do solemnly affirm on oath and state as under:-

1. That I am the Petitioner in the aforesaid Contempt Petition and as such I am well conversant with the facts and circumstances of the case and hence I am competent to swear this Affidavit.
2. That the contents of the accompanying Contempt Petition have been drafted as per my instructions and I have read over the contents and understood the same.
3. That facts and contents stated in the aforesaid Contempt Petition are true and correct to the best of my knowledge and belief, no part of it is false and no material has been concealed therefrom.
4. That the Annexures enclosed with the Contempt Petition are true copies of its respective originals.


DEPONENT

VERIFICATION:

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Verified at New Delhi on this the 30th day of June, 2016 that
the contents of the aforesaid affidavit are true and correct to the
best of my knowledge and belief and nothing material has been
concealed therefrom.

WZ
DEPOSONT

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ANNEXURE P-1

ITEM NO.57

COURT NO.4

SECTION IIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).2524/2014

(From the judgement and order dated 26/02/2014 in CRLWP

No.10/2014, of The HIGH COURT OF BOMBAY AT PANAJI)

UNIQUE IDENTIFICATION AUTH. OF INDIA & ANR

... Petitioner(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION

... Respondent(s)

(With appln. for exemption from filing c/c of the impugned
Judgment and office report)

Date: 24/03/2014 This Petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN

HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s) Mr. Mohan Parasaran, SG

Mr. Rakesh Khanna, ASG

Mr. Zohen Hossain, Adv.

Mr. Alok Mishra, Adv.

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Mr. D.S. Mahra, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

Issue notice.

In addition to normal mode of service, dasti service, is permitted
Operation of the impugned order shall remain stayed.

In the meanwhile, the present petitioner is restrained from
transferring any biometric information of any person who has
been allotted the Aadhaar number to any other agency with out
his consent in writing.

More so, no person shall be deprived of any service for want of
Aadhaar number in case he/she is otherwise eligible/entitled All
the authorities are directed to modify their forms/circulars/likes
so as to not compulsorily require the Aadhaar number in order
to meet the requirement of the interim order passed by this
Court forth with.

Tag and list the matter with main matter i.e. WP(C) No.
494/2012.

[Usha Bhardwaj]

[M.S. Negi]

A.R.-cum-P.S.

Assistant Registrar

//TRUE TYPED COPY//

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ANNEXURE P-2

Indian Oil Corporation Limited
Marketing division : Indane Area Office

IV Floor, Unity Building , JCW Road,

Bengaluru-560002

Tel : 22239473, 22220318, 22237325

Telefax : 08022272399

Internet site : www.ioco.com

DT - 1-2-16

Ref: BAO/Circular/Aadhar

Date: 01.02.2016

To

All Indane Distributors

Bangalore Area Office

Sub: 100% Aadhar seeding of BTC customers

Dear Sir/Madam,

This is subsequent to the various circulars on 100% aadhar seeding of BTC customers.

A VC was conducted by JS (M), MOP&NG with the field officers of OMCs on 29.01.2016 for reviewing the progress of Aadhar seeding for the districts where the gap between Adult aadhaar generation and Aadhaar seeded in LPG database is very high.

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The following points were communicated & accordingly further action plan has been drawn, which is given below:

- 1) PMO is following up with MO&NG for doing aadhaar seeding in LPG on weekly basis. It has been clearly stated for Mop&NG that target of 90% aadhaar seeding in LPG database before 29.02.2016 is non negotiable and is to be achieved by all means.
- 2) Below points to be clearly communicated to BTC customers, who are not having Aadhaar number seeded in their database.
 - Supreme court has allowed the usage of aadhaar card for LPG subsidy transfer.
 - With a view to better the subsidy transfer mechanism to targeted customers, MOP&NG has made collection of aadhaar mandatory for receipt of LPG subsidy.
 - Subsidy transfer to your bank a/c can be delayed through BTC mode.

It should be also ensured that all BTC customers are to be contacted through door to door survey/ over telephone for taking the Aadhaar details. No refill should be delivered to any

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customer without obtaining declaration. The data on collection of declaration of those BTC customers who are not having aadhaar has to be generated and reported to concerned FOs on daily basis.

The contents of the above mail at Sr. No. 2 may be displayed on your Showroom Notice Board for the information of customers.

Thanking you.

Yours sincerely

F/ Indian Oil Corporation Limited

//TRUE TYPED COPY//

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ANNEXURE P-3

File No : Contempt - MoPNG & IOCl - 1

Date: Wednesday, May 05.2016

From: Mathew Thomas

18 / A, Adarsh vista, Basavanagar,

Bengaluru 560037

To:

1. The Secretary, Room No : 206 A, Ministry Petroleum and Natural Gas, "A" Wing, 2nd Floor, Shastri Bhawan Dr. Rajendra Prasad Road, New Delhi - 110001 (Phones : 23383501, 2338356)
2. The Chairperson & Managing Director, Indian Oil Corporation Ltd. 3079/3 J B Tito Marg, Sadiq Nagar, New Delhi, 110049 and Indian Oil Bhawan, G-9, Ali Yadav Jung Marg, Bandra (East), Mumbai - 400051 (Phones : +91-22-2644-7000 & +91-22-2644-7222)

Dear Sir / Madam,

Subject: Contempt of Supreme Court Orders dated 11 Aug 2015 and 16 Oct 2015

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Reference: Circular dated 0.1 Feb 20.16 of Chief Marketing Manager, Indane Division of Bangalore Area Office, insisting that unless UID / Aadhaar number is furnished benefit of LPG subsidies would be denied by not providing refills, displayed at Indane distributors' premises in Bengaluru. (A photo copy of the circular is attached.)

Please refer to your above Circular displayed in the premises of your Indane distributor- Sudheendra Indane Gas agency - No. 96/3, 80 Feet Road, HRBR layout, Hennur Main Road, Near Andhra Bank, Bengaluru, Karnataka 560043.

A photo copy of the said Circular was given to me by one of your customers, Ms. Reshma - Indane Customer No. CX8037396.

The said Ms. Reshma was denied subsidised domestic LPG refill on the ground that she did not possess UID/Aadhaar number. On 19th of April 2016 the staff of Sudheendra Indane Gas agency distributor - No. 96/3, 80 Feet Road, HRBR layout, Hennur Main Road, Near Andhra Bank, Bengaluru, Karnataka 560043 told her that unless she submits her UID/Aadhaar number, she

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will not be given subsidised LPG refill. This is clearly contempt of the Supreme Court's orders.

The online LPG refill booking system gave her a message that booking stands cancelled. Kindly book again or contact distributor to know the reason of cancellation.

On 20th of April she checked with the Office staff in the Sudheendra Indane Gas agency and they clearly told her that without submitting Aadhar Card number they cannot issue subsidized refill booking. There are many others who have received identical treatment and messages from your company.

You may kindly note that the IOCL Circular of is in contempt of the above Supreme Court order.

You may also please note that in its order of 11 Aug 2015, the Supreme Court has ordered that wide publicity be given to the fact that UID/ Aadhaar shall NOT be made a condition for any benefit or service.

Failure to give such publicity is also tantamount to contempt of the Court.

Please note that you have not only committed contempt by not obeying the Court's order to give wide publicity that UID / Aadhaar is not mandatory, but on the

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contrary, you have compounded the offense by insisting on UID / Aadhaar for providing IOCI customer, Ms. Reshma, and others like her, the service / benefit of subsidised LPG refill and giving wide publicity of such denial by displaying such circulars at distributors' premises.

You are requested to immediately, within 7 days from the date of this letter, to advertise that UID/Aadhaar is NOT mandatory for subsidized domestic LPG new connections or refills, that the Circular dated 01 Feb 2016 displayed in premises of Indane distributors is incorrect and issue a fresh circular stating categorically that you will not deny the subsidised LPG connections or refills to any of your customers.

Please also ask all your offices throughout the country to withdraw all such circulars issued/displayed by you making UID / Aadhaar mandatory.

Further, please issue instructions to all distributors of domestic LPG not to deny refills or new connections to those who do not possess UID/Aadhaar. Please ask the distributors to prominently display the fresh circular in their premises.

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Please change the online booking system to prevent it from giving messages that the customer account is blocked to those who do not possess UID/Aadhaar numbers.

Please send to me copies of your letters/ communications issued to your offices and distributors as above.

Please also confirm that the online booking system has been changed to ensure that no person is denied subsidized domestic LPG for want of UID/Aadhaar numbers.

Please immediately within 7 days order the distributor above name to issue, J subsidized LPG cylinder to the said Reshma who was denied the same.

Please note that should you fail to comply with my request herein, I shall be constrained to approach the Supreme Court for relief and you may be liable to all consequences thereof.

Yours truly,

Sd/-

Mathew Thomas

India Post Receipt

SP - (560071)

EK258295295IN

Counter No : 1, OP-Code : RAMNJ

To : The Chairperson, IOCL

New Delhi, Pin : 110049

From : Mathew Thomas, BG 37

Wt : 20 grams,

Amt : 40.00, 10/05/2016, 14 : 34

Taxes : Rs. 5.00 (Track on www.indiapost.gov.in)

Cont - - -

65
Indian Oil Corporation Limited

Tel. 22239472, 22220018, 21237342

Fax No. -

Ref : BAO/Circular/Aadhar

Date : 01.02.2016

To

All Indane Distributors
Bangalore Area Office

Sub : 100% Aadhar seeding of OTC customers.

Dear Sir/Madam

This is subsequent is the Aadhar Circular on 100%
Aadhar seeding of DTC costumers.

AAC was conducted by - with the field officers of DMC on
29.01.2016 for Aadhar - and Aadhar seeded in LPG date
wise is very high.

The following - were communicated & accordingly further
action plan has been - which is given below.

1) - is following up with MoP & NG for doing aadhar
Seeding in LPG on weekly basis. It has been clearly
stated by Mop & NG that target of 90% aadhaar seeding
in LPG - base before 29.02.2016 is non negotiable and is
to be achieved by all means.

2) Below points to be clearly communicated to BTC
customers, who are not having aadhar number seeded in
their dstabase.

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- Supreme Court has allowed the usage of aadhaar card for LPG subsidy transfer.
- With a view to better the subsidy transfer mechanism to targeted customers, MoP & NG has made collection of Aadhaar Mandatory for receipt of LPG subsidy.
- Subsidy transfer to your Bank a/c can be delayed through BTC made.

It should be also ensured that all etc customers are to be contacted through door to door survey/over telephone for taking the Aadhar detail No refill should be delivered to any customer who are not having aadhar has to be generated and reported as concerned Fos on daily base.

The contents of the above mail at Sr. No. 2 may be displayed on your showroom notice Board for the information of customers.

Thanking you.
Yours Sincerely
Indian Oil Corporation Limited
Sd/-

//TRUE TYPED COPY//

23/9/13 → Para 222 order - No person should suffer for not having Aadhar
In spite of some authorities passing orders making Aadhar
mandatory - Authorities to check legal status of voluntary
applicants to Aadhar & ensure it is not used to illegal
entrants. [P-1]

26/11/2013 - SC disallowed application from Mins of Petroleum & Natural
gas, GOI, UIDAI & oil marketing companies to modify order of 23/9/13
to allow them to use Aadhar.

21/2/14 - SC - Aadhar not compulsory. Same to be maintained by all govt
communication.

16/3/15 - SC Noting widespread contempt, reiterated its order of 23/9/13
& 26/3/14 in substance.

● 11/8/15 - Matter Refs to Constitutional Bench + Interim order -

- 1) Not to publicize that Aadhar is Voluntary
- 2) Aadhar not mandatory for any other services
- 3) only usable for PDS grain distribution, LPG & Kerosene delivery
- 4) No other use of Aadhar data unless directed by a court for use in
criminal investigation

15/10/15 - A few other schemes allowed conditional on Aadhar being voluntary
& enforcement of 23/9/13 & other orders

1/2/16 - Bangalore area Chief Area Mgr of IOC passes circular mandating Aadhar
for Indane distribution, complaint in May - no response

● WP 494/2012